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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-sixth session

SUMMARY RECORD OF THE 1093rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 March 1995, at 3 p.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Second, third, fourth, fifth and sixth periodic reports of Guatemala (CERD/C/256/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Urruela Prado, Mr. Putzeys Uriquen, Mr. Olivero García and Miss Phefunchal Arriaza (Guatemala) resumed their places at the Committee table.

2. Mr. YUTZIS (Country Rapporteur), continuing his analysis of Guatemala's consolidated report, asked the Guatemalan representative, in connection with article 5 (c) of the Convention, whether the electoral and party political system in Guatemala allowed for the genuine representation of the indigenous communities. He was aware that a certain number of indigenous persons were deputies in the Parliament, but they appeared to represent political parties rather than indigenous groups. He wondered whether it would be possible to amend the legislation on political parties to permit more indigenous persons to enter Parliament and to represent their communities more effectively. He would also like to know the proportion of indigenous persons serving at all levels on the Development Councils, which were important in the formulation of social strategies.

3. In respect of article 5 (d) (i) of the Convention, he drew attention to complaints about excessive controls, by the military, of indigenous peasant groups, who also experienced difficulties in obtaining proper documentation. Moreover, in connection with article 5 (d) (vii), he requested some information on the events of 7 February 1994, when the army had surrounded an Evangelical Church at Santa Clara, Amachel, while a service had been taking place, and on the death of Mariano Pérez, an indigenous former coordinator of catechists, at Santo Domingo, Sayaxche, since, in both cases, there might be a problem of freedom of religion for indigenous peasants.

4. He was pleased to note that Guatemala recognized the right to work in its Constitution; not all constitutions contained that provision. In Guatemala, wages were fixed by sectors. He would like to know what was being done to protect the minimum wage in the north, whether it was true that there were only seven labour tribunals in the country, when the legislation required by article 70 of the Constitution would be put into place and when Guatemala would ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

5. In connection with article 5 (e) (ii) of the Convention, he asked why trade union leaders and advisers had to be persons of Guatemalan origin. Such a provision seemed to be contrary to ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise ratified by Guatemala in 1952.

6. It would be wrong to discuss the report of a State party having such a large proportion of indigenous inhabitants without referring to the land issue, which was so important to them. He would like to know what proposals

there were to solve the land problem in the 1994-1995 plan to combat poverty. A 1979 report by USAID had indicated the difficulties experienced by Guatemala with regard to land distribution, stating that 89.8 per cent of smallholdings were of less than 7 hectares. That might have been so since colonial times, but the division of the land into very large and very small farms certainly constituted a problem.

7. The Maya rural population was apparently split up into 19,000 communities of approximately 2,000 inhabitants each and received only 6 per cent of GDP. Some 70 per cent of the indigenous population lacked cultivable land and the situation with regard to ownership was often unclear. The Supplementary Title Deed Act disregarded the indigenous tradition of transferring property without legally registering it, leading to disputed ownership. An explanation as to how that problem was being solved would be appreciated.

8. The serious social situation in Guatemala was being exacerbated by the return of refugees from Mexico and of some internally displaced persons to their places of origin. A very difficult problem was being created, since it was necessary to reconcile the interests of both parties - the legal occupiers and the returnees. Small-scale fighting was even feared.

9. The existence of the indigenous Ixcan Grande cooperative was recognized by the Government and FONAPE, a very important institution, was reported to cover the needs of more than 196 cooperatives. He would like to know whether that information was correct, since there were problems with the occupation of land. For example, was it true that at Los Cimientos, in San Gaspar de Chajul, the land was occupied by a military unit? For a long time, there had been problems at El Jaibal de San Jorge estate in La Laguna Solola. The indigenous population apparently had title deeds, but there might also be other legal owners. What was the exact situation? The Government had handed out 16,100 title deeds and wished to legalize other imperfect claims to ownership. What specific plans did the Government have and over what period of time?

10. Statistics indicated that 80 per cent of the Guatemalan population lived in poverty or extreme poverty and that over one half of existing dwellings had no drinking water and that 63 per cent lacked sanitation. Health plans covered only 14 per cent of the population and the infant mortality rate was 57 per 1,000 live births. It would be important to have, at least in the next periodic report, some information on those problems, with particular reference to the indigenous population.

11. In 1980, of every 100 children between 6 and 11 years of age, only 5 per cent had been attending school. In 1970, of every 100 adults, only 45 per cent had known how to read. It was therefore encouraging to note that, in 1994, the Government had created 3,000 posts for teachers, 800 of them bilingual. Some further information on that development would be appreciated.

12. In connection with article 6 of the Convention, he noted that the military authorities had informed the Inter-American Commission on Human Rights that orders had been given to make reparations for the destruction of crops. In various cases, the Inter-American Commission on Human Rights had verified that the army had made compensation for damage caused in military

actions available to the representatives of indigenous communities. Could that information be confirmed and how much compensation had been granted and in what amounts?

13. Guatemala had a heavy external debt and many internal problems, but he would like to draw attention to some positive steps taken by the Government. They included the creation of the National Peace Fund, the National Programme of Support for Small Businesses, the Rural Emergency and Solidarity Fund and the Integral Development Programme for Rural Communities. It would be important for the Committee to be informed, in a subsequent report, of the contributions those institutions had made to the promotion of the well-being of the indigenous population.

14. According to information available to him, there had been 155 radio stations in Guatemala, but only 5 of them had broadcast in the indigenous languages used by 50 per cent of the country's population. Had that situation improved recently?

15. Lastly, he thanked the Guatemalan delegation for having come to the meeting, thereby demonstrating the Government's interest in renewing its dialogue with the Committee.

16. Mr. VALENCIA RODRIGUEZ said that Guatemala's report was one of the most complete that the Committee had ever received and it hid no problems. He noted from part I that the ethnic composition of Guatemala was very rich and varied, with indigenous peoples accounting for 52 per cent of the population, and that 83.4 per cent of the population lived in poverty. Part II contained some very useful information on the Constitution and the law, covering all matters relating to articles 2 to 7 of the Convention, although more details could have been given on the way in which the various provisions were implemented and on any reforms that might be needed.

17. He noted that, although Guatemalan law contained general provisions for punishing persons who committed a crime and for prohibiting certain meetings or organizations, there was no specific legislation on the fundamental aspects of article 4 of the Convention. The Government of Guatemala should therefore be requested to review its legislation with a view to incorporating the missing measures. The provisions of the Penal Code mentioned in paragraph 97 of the report were inadequate.

18. The report gave a detailed account of the legal arrangements for guaranteeing racial equality in the exercise of the rights covered by article 5 of the Convention. It would, however, be helpful if the Committee could have some information on how those arrangements were applied in practice, including information on the functions of the Procurator for Human Rights, on whether he had had to deal with any complaints of racial discrimination submitted by ethnic groups and on whether the latter were aware of his functions.

19. The provisions of article 145 of the Constitution, under which nationals of States that had constituted the Central American Federation were also considered to be of Guatemalan origin while at the same time retaining their original nationality could not, in his opinion, be regarded as contrary to the

principle of equality, since the current trend in many parts of the world was towards regional integration and the granting of nationality to persons from other countries within the same regional group.

20. The provisions on property and inheritance must, of course, be seen in the light of the general information given on the high level of poverty in Guatemala. Even if there was, in law, no discrimination in the exercise of specific rights, in practice, only a small group would be in a position to exercise them fully. For example, although the right to property was guaranteed and duly regulated, only a minority of the Guatemalan population benefited from it. The ethnic minorities thus did not enjoy that right on a footing of equality. The exception to the general rule of equality between foreigners and nationals represented by the provision of article 102 (n) of the Constitution, which gave Guatemalan workers precedence over foreigners, was understandable in the light of the country's social and economic situation.

21. In connection with article 5 (e) of the Convention, he asked to what extent the different ethnic groups benefited from the right to form and join trade unions and the right to housing, public health, medical care, social security and social services.

22. Since, under the legislation in force, victims of discriminatory acts could have recourse to the courts, it would be interesting to know whether any acts of discrimination had in fact been brought before the courts. More information was also needed on the application to different ethnic groups of the domestic legislation relating to article 7 of the Convention, as well as on the plans made to disseminate human rights and to extend the measures to promote folklore and handicrafts and the fraternal coexistence of the different ethnic groups living in Guatemala.

23. He was pleased to note that the provisions of the Convention could be invoked before the courts, tribunals and administrative authorities, although provisions of international law must first be subjected to the process of the enactment of legislation by Congress. In that connection, he wished to know whether Congress had already enacted such legislation in respect of the Convention or whether the Convention could be applied by the courts only on the basis of the legislation which had approved and ratified the Convention as a step prior to its entry into force in Guatemala.

24. Mr. de GOUTTES said that the report came at an important time in Guatemala's history, as the country tried to rebuild itself after the recent political upheavals. The report before the Committee was comprehensive, perhaps even too comprehensive, since it quoted at length from laws dealing with all kinds of rights, but did not give many details of the implementation of the Convention in practice. Fortunately, the Guatemalan delegation's oral introduction had helped to fill some of the gaps.

25. The most serious problems facing Guatemala were poverty, underdevelopment, economic and social discrimination and illiteracy. The statement in paragraph 13 of the report that over 83 per cent of the population was considered poor, with 64.5 per cent extremely poor, was an arresting one. Corruption and violence were also major problems. Inevitably,

it was the poorest groups in society, particularly the indigenous population, which suffered most. Considerable progress had been made since the accession to power of President de León Carpio and the conclusion of the Comprehensive Agreement on Human Rights in March 1994. However, the President himself had acknowledged, in his statement to the 1995 session of the Commission on Human Rights, that there were still serious problems to be overcome.

26. He asked the Guatemalan delegation to explain what measures the Government had taken to overcome the impunity enjoyed by those responsible for human rights violations. Had there been any prosecutions or convictions of such offenders, particularly members of the security forces?

27. His second question concerned the Government's attempts to reform the administration of justice. Paragraph 120 of the report stated quite bluntly that the administration of justice was affected by family and political ties, bribes and influence-peddling. What reforms had been undertaken to guarantee the independence and impartiality of the judiciary? What were the main features of the new Penal Code, adopted in July 1994, and did it cover all the forms of racial discrimination listed in article 4 of the Convention?

28. Thirdly, he asked what measures had been taken to prevent human rights violations, abuses of power and corruption in the various police and security forces. What human rights training did the police receive? Had there been any further attempt to disband the notorious Civil Self-Defence Patrols (PACs), which had allegedly enrolled many peasants and indigenous people by force and had been accused of violence, extortion and countless extrajudicial executions?

29. Paragraph 118 of the report quoted article 45 of the Constitution, which stated that the right to take proceedings against violators of human rights was a public right and that resistance by the people to protect and defend the rights and guarantees set forth in the Constitution was legitimate. Did that mean that people could be exempted from criminal responsibility on the grounds they were defending the rights laid down in the Constitution? He would welcome more information about the provision, which seemed an interesting and original one. He also wished to have information on the measures which had been taken to protect people and organizations working to promote human rights in Guatemala.

30. Mr. WOLFRUM said that it was most gratifying to see a Guatemalan delegation appearing before the Committee again after several years' absence. The report before the Committee was certainly long, but he could not agree with his colleagues that it was comprehensive, since much of it consisted of quotations from the Constitution and other laws, sometimes repeated several times in the course of the document.

31. The statistics given did not always answer the Committee's specific concern, namely, the situation of the indigenous population. For instance, paragraph 13 of the report stated that 16.6 per cent of the population was not considered poor, but how many indigenous people were included in that category? Poverty in Guatemala was clearly acute, but he was sure that it affected some groups of the population more than others.

32. Neither the report nor the delegation's oral introduction gave any information about specific efforts by the Government to improve the situation and especially the educational status of the indigenous population. It might be argued that such a failure was no evidence of racial discrimination, but, under article 2, paragraph 1 (c), of the Convention, the Government of Guatemala had undertaken to review its policies and amend any laws and regulations which had the effect of creating or perpetuating racial discrimination wherever it existed. He had heard no evidence so far that the Government was doing so.

33. Paragraph 85 of the report quoted article 4 of the Constitution, which stated that, in Guatemala, all human beings were free and equal in dignity and in rights. There was no mention of any provision which prohibited discrimination on ethnic, racial or other grounds and which was to be found in the constitutions of many other countries. Did any such provision exist in the Guatemalan Constitution and, if so, how was it implemented in practice? After all, under the Convention, States parties were obliged to combat racial discrimination committed not only by public authorities, but also by private individuals. He was thinking particularly of the way in which white farm owners allegedly treated their non-white farm workers. Paragraphs 96 to 100 of the report listed the legislation relating to article 4 of the Convention, but he could find no indication of the way in which article 4 was actually implemented in practice. He would welcome details of any court cases and convictions relating to the provisions of that article.

34. Paragraph 103 of the report referred to the right to be elected to public office. Clearly, the indigenous population, which made up some 60 per cent of the population, was not adequately represented, since the Committee had been given the names of only two or three indigenous members of Parliament. He would welcome details of any measures the Government intended to take to remedy that situation and of any proposals to change the electoral rules.

35. Mr. van BOVEN said he agreed that the Guatemalan report did not provide much information about the Government's fulfilment of its obligations under the Convention. He had obtained useful information from the report of Mrs. Pinto, the Independent Expert of the Commission on Human Rights on assistance to Guatemala in the field of human rights (E/CN.4/1995/15).

36. As other members had said, the Committee needed statistics about the indigenous population, rather than the population as a whole. Mr. Wolfrum had mentioned the poverty figures given in paragraph 13 of the report; the figure given for life expectancy in paragraph 16 was also a general one covering the whole population. According to information provided by the Anti-Racism Information Service (ARIS), the life expectancy of the indigenous population was 17 years lower than of the Ladino population, standing at 47 years for men and 48 years for women. If those figures were true, they showed that the indigenous population was disproportionately affected by the patterns of inequality in the country.

37. Paragraphs 86 and 87 of the report stated that Guatemalan internal legislation guaranteed due compliance with article 2 of the Convention and thus constituted a prohibition of racial discrimination. However, the

Independent Expert's report cited many instances of racial discrimination in practice. He wished to ask the delegation what was really meant by the assertion in paragraph 87.

38. In respect of article 4 of the Convention, he, like other members, had found no evidence of measures to implement its provisions, although States parties were legally obliged to do so.

39. Turning to article 5, he asked how measures designed to remove the impunity of human rights offenders, which were described in the Comprehensive Agreement on Human Rights, were implemented in practice. Did the Government actively investigate every single instance of violent crime? The Comprehensive Agreement on Human Rights also pledged to protect human rights activists and organizations and he would like to know how that protection was guaranteed in practice, since, for many years, he had received a monthly list of allegations of murder, execution, torture and enforced disappearance of human rights activists.

40. He had been puzzled by the statement in paragraph 121 of the report that "within the context of common and political violence cases arise which do not involve the State but are dealt with by the legal means available for the purpose". What did that statement mean? After all, under article 5 of the Convention, States parties undertook to protect people from human rights violations, whoever the offenders were. He could therefore not think of any case in which the State would not be involved.

41. Paragraph 124 of the report stated that there were no restrictions on the inhabitants of Guatemala as far as economic, social and cultural rights were concerned. However, paragraph 125 stated that housing, public health, medical care and education services depended on the recipients' ability to pay and were thus "selective". In other words, presumably, a large part of the population was denied those rights in practice. That surely amounted to discrimination under article 2, paragraph 2, and article 5 (e) of the Convention.

42. Article 6 of the Convention guaranteed effective protection and remedies against acts of racial discrimination before the courts and other State institutions. How effective were habeas corpus and similar procedures in practice? What provisions existed to ensure that individuals could bring their case before a court? He could find no information on the subject in the report.

43. With regard to article 7 of the Convention, he noted the references to human rights education and the dissemination of human rights instruments in paragraph 132 of the report. However, there was no mention of efforts to increase public awareness of the purposes and principles of the Convention itself, to which Guatemala was committed under article 7. Were any such efforts under way? States parties were also encouraged to publicize the Committee's relevant concluding observations. Like Mr. Valencia Rodríguez, he would like to know whether the Convention could be directly invoked before Guatemalan courts, something that would be possible only if the general public was made aware of its existence.

44. Lastly, he asked whether Guatemala intended to make the declaration provided for in article 14 of the Convention, recognizing the competence of the Committee to consider communications by individuals. Such a move would prove that the Guatemalan Government was anxious to improve the human rights situation in the country.

45. Mr. FERRERO COSTA said that Guatemala was a country at a very difficult stage in its history. There had been some positive developments: despite the violence and militarism of the past, a dialogue had been established between the Government and subversive groups. Moreover, Guatemala had submitted a periodic report after a break of several years, and that showed its willingness to resume its dialogue with the Committee. He hoped that the momentum would be sustained and that the Government would continue to report regularly on the situation of racial discrimination in the country.

46. Clearly, the main problem in Guatemala was poverty, which particularly affected the indigenous population. The President had acknowledged poverty and the discrepancy in the living conditions of the rural and urban populations. He himself had read further allegations of limited employment and educational opportunities for indigenous people in a United States Department of State country report, as well as allegations of de facto discrimination against the Maya population. All that evidence indicated that racial discrimination was widespread and he considered that the Guatemalan representative must acknowledge that racial discrimination did exist in their country.

47. The periodic report did not demonstrate that Guatemala was implementing policies and specific measures to prevent and eliminate racial discrimination in compliance with article 4 of the Convention or to enable all groups to enjoy the rights covered by article 5. He therefore wished to know what measures had been adopted to enable the indigenous population to enjoy the rights covered by the Convention, and also whether Guatemala had adopted ILO Convention No. 169 and, if not, why not?

48. In Guatemala, as elsewhere, de facto discrimination clearly existed, and that called in question the statement in paragraph 87 of the report that no form of racial discrimination might be practised against persons, groups of persons or institutions and that international human rights legislation was respected. That statement was unacceptable and should not be repeated in future reports.

49. He asked whether the Presidential Commission for Coordination of the Executive in Matters Relating to Human Rights (COPREDEH) was operational and what its role and functions were. In conclusion, he expressed the hope that the shortcomings in the report concerning specific measures to give effect to the Convention and solve the serious problem of discrimination against the majority indigenous population would be remedied in the next periodic report.

50. Mr. ABOUL-NASR asked the representative of Guatemala to select any one article of the Convention and to describe its application in Guatemala, with specific reference to the indigenous population.

51. The CHAIRMAN, speaking as a member of the Committee and welcoming Guatemala's resumed dialogue with the Committee, said that he appreciated the problems facing the country, as it embarked on the democratization process, in fostering social and economic development and combating poverty and illiteracy. He realized that the Guatemalan delegation had had little time to prepare its answers to the Committee's numerous questions and comments, which were to be seen not as criticism, but in the light of its constructive watchdog role of ensuring fulfilment by all States parties of their obligations under the Convention. The next report would, he hoped, provide replies to any unanswered questions.

52. Like Mr. van Boven, he asked whether Guatemala would consider making the declaration under article 14 of the Convention. In addition, could the Government consider accepting the amendment to article 8, paragraph 6, of the Convention concerning the financing of the expenses of the members of the Committee?

53. Mr. URRUELA PRADO (Guatemala) said that the main reason for his country's failure to submit periodic reports in recent years had been the chronic shortage of competent administrative services, against a background of instability. Guatemala's compliance with its reporting obligations had now improved with the process of democratization and with the establishment of the Presidential Commission (COPREDEH), following a suggestion by Professor Tomuschat, Independent Expert of the Commission on Human Rights on the situation of human rights in Guatemala from 1990 to 1993.

54. He was fully aware of the inadequacies of the report, which failed to account fully for the action that had in fact been taken in implementing the Convention, despite Guatemala's shortage of human, technical and financial resources. His Government was anxious to ensure the full exercise and enjoyment of all human rights in Guatemala in compliance with the Convention and was most appreciative of the Committee's work and its members' expertise and obvious understanding of the situation in Guatemala. For those reasons and in order to make good the shortcomings in the drafting of the report, he conveyed a formal request from his Government to the Committee, through its Chairman - and read out a letter from the Permanent Mission of Guatemala to the United Nations to that effect - to be permitted to submit an expanded report to the Committee for consideration at its forty-seventh session, in the presence of a representative of his country. With a view to drafting that expanded report and also to preparing Guatemala's next periodic report due in February 1996, his Government further invited the Committee's Country Rapporteur for Guatemala to visit the country at his earliest convenience in order to provide assistance as part of the advisory services programme of the Centre for Human Rights. It wished to maintain its fruitful dialogue and close cooperation with the Committee and would provide the Country Rapporteur with all the necessary facilities.

55. Turning to Committee members' questions and comments, he said that the reference in paragraph 3 of the report to the role of education and training in minimizing the ethnic contradictions which prevailed among some sectors of the population had to do with social dynamics and the de facto identification of the various groups, including that of those groups among themselves; to

that should be added a lack of knowledge of the legal framework governing Guatemalan society, and it was to that problem that the sentence referred. Recognition of a problem was the first step towards solving it.

56. The statement in paragraph 6 of the report to the effect that Guatemala undertook to fulfil its obligations referred specifically to the fact that it was now in a position to fulfil its reporting obligations under international human rights instruments, which it had been unable to do in the past, not through a lack of political will to meet its international commitments, but for the reasons he had previously given. With reference to paragraph 13 of the report, he was unfortunately unable to specify the ethnic breakdown in relation to levels of poverty, since the census had taken account only of per capita income. An ethnic element could be incorporated into future censuses to demonstrate his Government's willingness to comply with the terms of the Convention.

57. The question of the difference between "Indian" and "Ladino" concerned an interesting sociological distinction specific to Guatemala, reflecting, as it were, a distinction between dominated and dominant cultures. "Ladinos" could be mestizos, but could also be Indians, who had undergone a process of transculturation, i.e., through contact with other groups, had abandoned their language and traditional dress and had taken on another culture. The statement in paragraph 25 that the term "Indian" was traditionally used by the Guatemalan people in a disparaging sense went back to the colonial period, when a situation of domination had prevailed. The connotation of "Indians" as the dominated or conquered people continued to exist, as the report had frankly admitted, although it was not very common. He was grateful to the Country Rapporteur and others for drawing attention to the unfortunate statement in paragraph 62 that indigenous movements were élite groups. It had doubtless been intended to refer to certain specific groups, but he agreed that it was an error that should not be repeated.

58. One of the more important comments made concerned the absence of information on the law to be enacted to give effect to article 70 of the Constitution, which included a section on indigenous populations. It was only with the election of President Ramiro de León Carpio that the reality of Guatemala as a multiracial and multicultural nation had been accepted and that a legislative process had been set in motion to establish the legal framework to protect the indigenous population and promote its development. A crucial step had been taken with the establishment of the Guatemalan Indigenous Development Fund (FODIGUA) to support and reinforce the sustained and self-managed process of human development of the Mayan indigenous people, its communities and organizations. Information on other laws currently being considered by Congress would be included in Guatemala's expanded report or in its next periodic report.

59. He agreed that the statement in paragraph 87 of the report to the effect that no racial discrimination was practised in Guatemala reflected a contradiction between the de jure and the de facto situation and should not be repeated in future reports. With reference to the comment that there were no legislative or constitutional measures prohibiting organizations inciting racial discrimination, as opposed to those defending communist ideology, he said that the Government was tackling the substantive issue of integration on

a non-discriminatory basis through a process of negotiation and consultation. Governments in the past had been given to ruling by decree, whereas the present Government was committed to adopting legislation, which was a lengthy process. It was important to note that the Constitution had been adopted subsequent to Guatemala's accession to the Convention and that international human rights instruments took precedence over domestic law and formed part of it. The question whether individuals could invoke the Convention before a court of law could thus be answered in the affirmative.

60. In reply to the question about the timetable for the peace negotiations, he said that a letter addressed by the United Nations Secretary-General to the parties concerned in December 1994 had made it clear that the Government was not responsible for the delay. The Government's willingness to pursue the talks was patent. The forthcoming meeting in Mexico would demonstrate its concern for the rights of indigenous peoples. Questions such as the role of the army in a democratic society and the right to land ownership were crucial issues in the current negotiations, which were expected to resume according to a new, flexible timetable. It was hoped that by August or September, a final agreement might be reached.

61. He agreed that there had been problems with the Civilian Self-Defence Patrols (PACs) created by the State as part of its reaction to insurgency, but also used by the insurgents themselves to control the population. In the peace process negotiations, the guerrillas had agreed neither to set up nor to take any action that might lead to the setting up of new groups of that kind. As the Independent Expert had noted, the numbers of patrol members had been greatly reduced and efforts were being made to disarm the PACs and transform them into peace and development committees. The patrols did not exist in all parts of the country and, where they persisted, it was at the wish of the local population. Otherwise, they tended to disband themselves.

62. In many cases, the PACs had filled the gap created by a seriously undermanned police force. The allegation that that force was controlled by the army was incorrect. As a result of recent changes at the top of the hierarchy, the Director-General of the National Police was now a distinguished jurist and member of the Constitutionality Court, whose close collaborators included a large number of lawyers. Investigations had been carried out and individual penalties imposed for past excesses attributed to the police forces, especially in connection with disturbances among university students. Measures were being taken to increase the recruitment of members of the police force, to ensure better training and to broaden police powers, particularly with regard to investigations.

63. Forcible recruitment into the armed forces had been the subject of a number of questions by members of the Committee. He recalled that President Ramiro de Léon Carpio had stated publicly in June 1994 that military service must not be forced, ordering that recruits must be volunteers only and that minors be excepted from recruitment. Coercion was thus a thing of the past or would be when the President's decision had become law. Two draft bills to that effect were being considered. To the best of his knowledge, no distinction was made between indigenous persons and others in the length of military service, which was two and a half years. The transition from an army

composed mainly of conscripts to one made up of volunteers would be facilitated by the fact that, in certain parts of the country, there was a strong tradition of voluntary military service.

64. Questions had been asked about the "Communities in Resistance" (CPRs). Problems in that connection were gradually being solved. Members of the CPRs were increasingly re-entering the mainstream of society, establishing new settlements and cooperatives. The current numbers of CPRs were lower than suggested by the Country Rapporteur. He had no particular information about the isolated communities mentioned by Mr. Yutzis.

65. Since 1992, problems relating to displaced persons, returnees and refugees had been dealt with by a number of organizations, which had begun with the difficult, but necessary task of recording their numbers and establishing documentation. During a number of clashes, the guerrillas had disrupted the infrastructures of local Government, destroying earlier administrative records. He agreed that regrettable incidents of military harassment had also occurred. Of the 40,000 refugees in Mexico, some 16,000 had returned to Guatemala - 10,000 since the recent change of Government - sometimes even to areas where peace had not yet been fully restored. The new Government's capacity to absorb such large numbers of returnees in such a short time was being stretched to the limit.

66. With regard to compensation by the army for the destruction of crops, he had no details to give the Committee, but would inquire into the matter. Everything possible was being done to create the necessary conditions for an orderly return and for the reunion and reconciliation of those who had been separated as a result of the insurgency. That would involve psycho-social, as well as material, rehabilitation and the mending of minds and hearts, as well as of fences. The lawful reoccupation of property that had been abandoned and subsequently taken over by others and the provision of compensation or financial incentives for resettlement were to be the subject of special measures, but public impoverishment caused by the war was hampering the efforts the Government was making for that purpose.

67. The new Code of Criminal Procedure introduced oral hearings as a means of guaranteeing due process of law and strengthening the rights of the accused. The transition from an essentially written procedure was certainly difficult and required new training, including language training, for judges so that the rights of non-Spanish speakers might be fully guaranteed. Measures had been taken in the Supreme Court to provide interpretation and translation in the three main indigenous languages, but there were limited resources for making such facilities widely available.

68. The security of judges and magistrates and the independence of the judiciary continued to be matters of concern, although serious efforts were being made by the new Government to make good the deficiencies of the past and to wipe the slate clean. Total success in that regard would depend, inter alia, on the reform of the Constitution, and that would obviously be a lengthy task. He pointed out that, if the judiciary had in the past lacked independence, it had been a prisoner more of the political parties than of the executive branch of Government. The Independent Expert had dealt at length in her report on the question of the security and safety of judges and questions

had been asked by members of the Committee. Commenting on cases that had been resolved or were before the courts, including that of the extrajudicial execution of the anthropologist Myrna Mack Chang, he said that the fact that harsh sentences were being handed down was an encouraging sign of the beginning of the end of impunity, a question dealt with by Mr. de Gouttes. The situation was sure to improve further as the powers of the police to investigate and secure indictments were extended and its manpower and financial resources developed.

69. Mr. van Boven had referred to the availability of housing, public health, medical care and education, which was mentioned in paragraph 125 of the report. A whole catalogue of measures had been initiated by the Government in those areas, for which a considerable proportion of the State budget had been earmarked and it was hoped that fiscal reform would result in even more funding. He pointed out that paragraph 125 of the report should not be taken to mean that the services in question were provided only in the private sector. Public funding was available, and on a non-discriminatory basis; at no time had education or public health been selective or entirely private.

70. The Executive had signed ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the procedure for ratification by Congress was under way.

71. He assured the members of the Committee that the authorities were doing everything possible to extend maximum protection to human rights activists in Guatemala. A productive exchange of views on the question had been held with representatives of non-governmental organizations in Geneva during the recent session of the Commission on Human Rights. The Commission had also provided Guatemala with considerable assistance in the preparation of the report before the Committee, whose additional cooperation would be welcomed in the future.

72. In reply to Mr. Aboul-Nasr's request, he drew attention to article 2 of the Convention. There could be no more convincing demonstration of Guatemala's compliance with its provisions than a Constitution that recognized the rights of the indigenous population and provided for the protection of ethnic groups and the work being done to build a legal framework through which that recognition and protection would be afforded to all of Guatemalan society.

73. His country was determined to do everything in its power to make its relations with the Committee as productive and mutually advantageous as possible. To that end, he would inform his Government that the Committee would like it to make the declaration under article 14 of the Convention and accept the amendment to article 8, paragraph 6, of the Convention.

74. Mr. WOLFRUM said that the letter which had been read out by the head of the Guatemalan delegation was unprecedented and had been welcomed by the Committee. The invitation to the Country Rapporteur for Guatemala was also welcome. The Country Rapporteur's mandate might be broadened to allow him to provide advice not only on the preparation of reports, but also on the implementation of the Convention.

75. Mr. YUTZIS (Country Rapporteur) said that Guatemala's report and the clarifications provided by the Guatemalan delegation indicated that Guatemala was starting to implement the provisions of the Convention.

76. He had also been favourably impressed by the letter which Guatemala had addressed to the Committee. Regardless the choice of representative to visit Guatemala, he was sure that the request would receive a warm welcome.

77. The CHAIRMAN said that the letter read out by the head of the Guatemalan delegation would be carefully considered and that a reply, particularly to the very welcome request which it contained, would be prepared as soon as possible.

78. The dialogue with the Guatemalan delegation had been both frank and fruitful. He was sure that the questions asked and concerns expressed would be brought to the attention of the Guatemalan Government and that additional information would be forthcoming in the next periodic report.

The meeting rose at 6.05 p.m.